

gone in favour of the appellant with PW2's evidence. In other words, even discounting the whole of PW2's evidence, the Magistrate found against the defendant on the oral evidence of PW1.

The decision of the Magistrate was based substantially on his assessment of the quality and credibility of witnesses. In order to reverse, I must not merely entertain doubts whether his decision is right but be convinced that it is wrong: see Lord Edmund Davies in *Whitehouse v. Jordan*⁽¹⁾ at page 276. I am not convinced that the Magistrate was wrong for the reasons given above.

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Wong & Partners; Tan, Lee & Partners.*

STATE v. 2Lt. FOO SAY CHIANG

[Mil. C.A. (Chua J. (President), Goh Heng Leong,
Tan Kok Quan, Col. Lee Seng Kong & Lt.-Col.
Loh Kum Kim) September 10, 1985]

[Singapore — Military Court of Appeal No. 4 of 1985]

Military Law — Misconduct — Officer ordering guards to lock their weapons when there was a show of force by trespassers — Whether act to the prejudice of good order — Singapore Armed Forces Act, 1972, s. 24.

The appellant, 2Lt. Foo Say Chiang, was from 1 SIR. He was charged for two offences contrary to the SAF Act 1972. On the first charge he was acquitted by the General Court Martial. He was, however, fined \$500 on the second charge. He appealed. The second charge read as follows:—

"2nd charge

AN ACT TO THE PREJUDICE OF GOOD ORDER
CONTRARY TO SECTION 24 OF THE SAF ACT, 1972,

in that he,

at 1 SIR, Guillemard Camp, Singapore, on 10 OCT 84 at or about 2359 hours without lawful authority ordered the guards to lock their weapons when there was a show of force by 1474325A SIM KIANG WEE, 1571367D PTE NYA KIM SIANG and 1685895A PTE HUI SENG THIM who were trespassers in the camp."

Held, allowing the appeal: although the order was a wrong order, it could not be said that the act of the appellant was prejudicial to good order and was culpable.

A MILITARY COURT OF APPEAL.

Peter Low for the appellant.

Leong Hee Tean for the respondent/State.

Cur. Adv. Vult.

B

Chua J. (President) (delivering the Judgment of the Military Court of Appeal). This is an appeal by 2Lt Foo Say Chiang of 1 SIR against his conviction by General Court Martial on the following charge:

C

"2nd charge

AN ACT TO THE PREJUDICE OF GOOD ORDER
CONTRARY TO SECTION 24 OF THE SAF ACT, 1972,

in that he,

at 1 SIR, Guillemard Camp, Singapore, on 10 OCT 84 at or about 2359 hours without lawful authority ordered the guards to lock their weapons when there was a show of force by 1474325A SIM KIANG WEE, 1571367D PTE NYA KIM SIANG and 1685895A PTE HUI SENG THIM who were trespassers in the camp."

D

He was fined \$500.00.

E

He was also tried on the following charge but was acquitted:

"1st Charge

NEGLECT TO THE PREJUDICE OF GOOD ORDER
CONTRARY TO SECTION 24 OF THE SAF ACT, 1972,

in that he,

F

at 1 SIR, Guillemard Camp, Singapore, on 10 Oct 84 at or about 2359 hours in the face of imminent danger of violence being used upon 1658301D 2LT CHUA KWONG MENG, the duty officer by 1474325A SIM KIANG WEE, 1571367D PTE NYA KIM SIANG and 1685895A PTE HUI SENG THIM who were trespassers in the Camp, he (the accused) did not render any assistance and to prevent PTE NYA KIM SIANG from damaging the telephone at the Unit guard room."

G

After hearing the appeal we allowed the appeal and now give our reasons.

H

The facts were these. On the night of October 10, 1984, Cpl Yap Bock Seong was the Guard Commander and 2Lt Chua Kwong Meng was the Duty Officer (DO). At about 2359 hours Cpl Yap received orders that there was going to be stand-to. He gathered the guards and issued them ammunition. Then the DO came and stood outside the guardroom.

I

At about that time a party of four persons appeared at the main gate of 1 SIR, Guillemard Camp, and wanted to come in. The guard 2IC went to seek the instructions of the DO, who said

to let them in. Before 2IC could open the gate one of the party unlatched the gate and the four walked into the Camp. They did not surrender their identity cards. They did not book in. The DO did not demand that they surrender their identity cards.

The four persons then approached the DO. They wanted to see the OC of "A" Company. The DO refused them permission and there was a commotion. At least two of the party were aggressive and hurled abusive and threatening words at the DO. The DO just stood there. At this juncture one of the party (later identified as Pte Nya Kim Siang), pushed the DO and was restrained by the Guard Commander. At that juncture the appellant, 2Lt Foo Say Chiang, was standing in close proximity to the DO and Pte Nya. The appellant did nothing.

Pte Nya then rushed into the guardroom and smashed a telephone. The appellant followed Pte Nya but did not stop him.

The appellant then told the guards in the guardroom, two of them, to secure their weapons, which they did. The police arrived shortly after they were summoned.

The appellant had returned to the Camp that night at about 2340 hours and was told that 2Lt Chua, who was the Duty Officer that night and was at the guardroom, wanted to see him. The appellant was then the acting 2IC of "B" Company and 2Lt Chua was one of his Platoon Commanders. The appellant thought that 2Lt Chua might want a training format as the latter would be giving a lecture. He went to see 2Lt Chua and came upon the incident at the guardroom.

The General Court Martial found the appellant guilty of the 2nd Charge as "the Court rejected the accused's defence that he had lawful authority to order the Camp guards."

The offence charged is that the appellant acted to the prejudice of good order contrary to section 24 of the Singapore Armed Forces Act in that he without lawful authority ordered the guards to lock their weapons when there was a show of force by four trespassers into the Camp.

It is conceded by counsel for the State that no evidence had been led before the General Court Martial to substantiate the contention that the appellant had no lawful authority to order the

A guards to lock their weapons. Counsel for the State sought before us to substantiate that contention. He tendered two documents — New Battalion Standing Orders dated March 21, 1984, signed by the OC 1 SIR and the General Orders For the Guardroom.

B By Battalion Standing Orders of March 21, 1984, all Battalion personnel were to note that the Battalion Standing Orders had been completely revised and updated including The Guardroom Standing Orders and they were exhorted to comply with the Standing Orders at all times and that
C "ignorance is no excuse for non-compliance and will be disciplinarily dealt with." Counsel for the State said that Standing Orders had the force of law.

D He pointed out that under paragraph 5 of the General Orders For The Guardroom no member of the guard once mounted could be relieved of his duty without the permission of the Duty Officer. He submitted that only the Duty Officer and no one else could order the guards to lock their weapons that night. He said that the Guardroom was a sacred place, so sacred that by paragraphs 19 and 20 of the General Orders for the Guardroom the guardroom and the detention area was out of bounds to all personnel and an officer could only visit the guardroom to see his subordinates doing guard duty or was a close arrestee. He argued
E that the officer had no authority to give orders to the guards there.
F

We were unable to accept this submission of counsel for the State. In our view the appellant, in the circumstances of this case, had the
G authority to give orders to the guards.

Let us see what was the situation when the appellant gave the orders to the guards to lock their weapons. Clearly the DO was not in control of the situation and he did not give any orders for the guards to react or take any action. In fact he had lost control of the situation. The Guard Commander said that the situation was out of control and that the DO was frightened. One of the guards said the reason why he secured his weapon was because the four persons were violent and he wanted to protect his weapon and he even went further and said in re-examination that most of them panicked and that he would have secured his weapon even if the appellant had not asked him to do so.
H
I

The argument of counsel for the State was

this. The act of the appellant in ordering the guards to lock their weapons was a sign of weakness, a sign of retreat, which showed the inability of the SAF to deal with four trespassers, and the appellant had neutralized the guards. That argument in our view is exaggerating the situation. There were many soldiers standing behind the DO. Even the unarmed guards could easily overpower the four unarmed trespassers. The situation could be handled by the unarmed guards if proper orders were given by the DO. It is all very well for the prosecution to say that the appellant was not in charge and he should not give orders. But as we have said the situation was out of control, the guards panicked and the DO did not give any orders. Was the appellant, an officer, to stand idly by and do nothing? That cannot be the position. If the argument of counsel for the State is correct then any SAF officer who comes across a situation where a Duty Officer is unable to control it cannot and should not go to the Duty Officer's assistance. What a ridiculous situation! In fact in this case the appellant was also charged for neglect to the prejudice of good order (the 1st Charge) in that he did not render assistance to the DO. In our view the appellant, in these circumstances, has the authority to give orders to the guards. Whether the order he gave was a correct order or not is another matter.

Counsel for the State then submitted that the order of the appellant in the circumstances of the case was an act to the prejudice of good order.

The General Court Martial had not considered this aspect of the matter, whether the order of the appellant, in the circumstances of the case, was an act to the prejudice of good order contrary to section 24.

To be punishable under section 24 the act must be blameworthy and deserving of punishment.

The appellant in his defence gave four reasons why he instructed the guards to secure their weapons. They were (and we quote from his evidence):

"(1) The guards in the guardroom — they did not know what to do. I assessed the crowd — there were so many soldiers hanging behind the Duty Officer — I felt that it would not be prudent had the guards used the rifles at any one time — one of our soldiers could well be hurt.

(2) I had observed that the outsiders were not armed.

(3) There were many of us there — there is no reason why we could not subdue them (without weapons) if asked to do.

A (4) One of the visitors may react adversely by getting hold of one of the rifles and something worse might have happened — whether damage to our rifle or using the rifle as a threat to our lives."

B Counsel for the State submitted that the appellant's order to the guards was a wrong order. We were of the view that counsel was correct. But was it an act to the prejudice of good order?

C Under Regulation 6(1) of The Singapore Armed Forces (Arrests, Searches and Investigation of Offences) Regulations, 1972, force may be used for the purpose of arrest only when absolutely necessary and in no case shall it extend to the inflicting of more than it is necessary to inflict for the purpose of making the arrest. And by Regulation 6(2) the use of force shall not include the use of fire-arms except under the following circumstances:

- D
- (a) where the offence is of a very serious nature; and
 - (b) the person being arrested is behaving in such a violent manner that damage to life or limb may result or the use of fire-arms is the only possible way of making the arrest.
- E

F The appellant intervened in what he honestly believed was the appropriate manner under the circumstances. In our view, although the order was a wrong order, it could not be said that the act of the appellant was prejudicial to good order and was culpable.

G For these reasons we allowed the appeal.

Appeal allowed.

Solicitors: S.K. Chua & Peter Low.

H

I